

Application No.: 09/727,953  
Preliminary Amendment dated: November 17, 2005  
Reply to final Office Action of: May 17, 2005

### **REMARKS**

Claims 1-21 are now pending and stand rejected. The remaining claims (22 through 28) are withdrawn from consideration. Applicant is submitting a Request for Continued Consideration (RCE) with this Preliminary Amendment. By this Preliminary Amendment, Applicant has amended the claims and is urging further arguments to establish that the claims here are distinct from the art asserted by the Examiner. In view of these arguments, Applicant respectfully requests the Examiner to reconsider all the outstanding rejections and to withdraw them.

Claims 1, 8 and 18 have been further amended. No new matter has been added as a result of these amendments.

It is assumed that the Examiner maintains her rejections under 35 U.S.C. Section 103 as she simply indicates that Applicant's prior arguments are not persuasive. Accordingly, claims 1-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,334,118 B1 (hereinafter "Benson") in view of U.S. Pat. No. 6,760,441 B1 (hereinafter "Ellison").

The rejection under 35 U.S.C. Section 103 is again respectfully traversed. It is respectfully submitted that neither Benson nor Ellison, alone or in combination, teach the claimed invention.

Benson does not teach loading "software" for operation on a computer system as recited by the claims here. Nor does Benson teach use of a validator program that operates a rental program in a secure environment in order to ensure that it is secure for use prior to actually using it in any environment within the computer system.

Benson teaches a system and method for renting programs. Benson teaches denying access to the "rented program" to ensure that users who rent the "rented program" are not allowed to use the "rented program" without paying for that use (see col. 1, lines 11-27 among other locations in the specification). Further, Benson teaches preventing the modification of an audit trail that documents the use of the "rented program," (see col. 4, lines 19-24 among other locations). Applicant respectfully submits that Benson teaches nothing about ensuring the security of a computer system in the manner of the present invention.

Application No.: 09/727,953  
Preliminary Amendment dated: November 17, 2005  
Reply to final Office Action of: May 17, 2005

To the extent the Examiner relies on Ellison for a teaching that a handheld or such portable device may be the platform, Applicant respectfully submits that there is no suggestion in Benson that invites a combination with Ellison. Even if the references are combined in the manner suggested by the Examiner, the combination would still not render the invention as claimed here obvious.

Also, with respect to the Examiner's obviousness rejections, Applicant respectfully points the Examiner's attention to the following case law and requests the Examiner to reconsider her rejections. Applicant respectfully submits that the Examiner's rejection for obviousness is improper because there is nothing in the cited prior art references, either singly or in combination, to suggest the desirability of the claimed subject matter. That the construction in a particular prior art reference would have resulted in the claimed combination had it followed the "common practice" of attaching certain parts does not show obviousness at the time of the invention but rather reflects improper hindsight analysis and the reading into the art of Applicant's own teachings.

*In re Raynes*, 7 F.3d 1037, 1039 (Fed. Cir. 1993):

When determining whether a new combination of known elements would have been obvious in terms of 35 U.S.C. § 103, the analytic focus is upon the state of knowledge at the time the invention was made. The Commissioner bears the burden of showing that such knowledge provided some teaching, suggestion, or motivation to make the particular combination that was made by the applicant. *In re Oetiker*, 977 F.2d 1443, 1445-47, 24 U.S.P.Q.2D (BNA) 1443, 1444-46 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. (BNA) 785, 788 (Fed. Cir. 1984). This determination is made from the viewpoint of the hypothetical person of ordinary skill in the field of the invention. 35 U.S.C. § 103; *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q.2D (BNA) 1885, 1888 (Fed. Cir. 1991).

*In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986):

"There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had followed the "common practice" of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether "the subject matter as a whole would have been obvious at the time the invention was made." 35 U.S.C. § 103 (1982); *In re Spornoble*, 56 C.C.P.A. 823, 405 F.2d 578, 585, 160 U.S.P.Q. (BNA) 237, 243 (CCPA 1969)."

Application No.: 09/727,953  
Preliminary Amendment dated: November 17, 2005  
Reply to final Office Action of: May 17, 2005

In addition, the remaining claims depend on claims 1, 8, or 18 and are distinct at least for the reasons urged here with respect to claims 1, 8 and 18. The dependent claims also recite further limitations, which separately make the dependent claims patentable.

### **CONCLUSION**

In light of the above amendments and remarks, Applicant respectfully requests reconsideration of the rejected claims solicits their allowance. In the event, an interview is useful in resolving any issues, the Examiner is invited to telephone the undersigned representative.

Respectfully submitted,

BERRY & ASSOCIATES P.C.

Dated: November 17, 2005

By: /ReenaKuyper/  
Reena Kuyper  
Registration No. 33,830

9255 Sunset Blvd., Suite 810  
Los Angeles, CA 90069  
(310) 247-2860